



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

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Appeal Brief
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In re Application of:

MARY C. FREDERICKSON : July 31, 2003
Serial No. 09/904,122 : Group Art Unit 3643
Filed: 07/13/01 : Examiner: KURT C. ROWAN

For: FISHING LURE OBSTRUCTION FREEING APPARATUS

BRIEF FOR APPELLANT

Commissioner for Patents

P O Box 1450

Alexandria VA 22313-1450

Sir:

This Brief is filed pursuant to the provisions of 37 C.F.R. 1.192 and M.P.E.P. 1206.

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REAL PARTY IN INTEREST

Applicant is the real party in interest.

RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences.

STATUS OF CLAIMS

Claims 1, 4-9; and 11-16 are pending in this application.

All of the pending claims have been finally rejected.

The rejection of all of the claims is appealed.

STATUS OF AMENDMENTS

An Amendment B was filed after the final rejection, and was entered upon the filing
of the Notice of Appeal.

SUMMARY OF THE INVENTION

The invention comprises a sleeve 12 having a slit, diagonal 14 as shown in Fig. 1, and straight 82 as shown in Fig. 2, with a plurality of chains secured to the bottom of the sleeve. A line 70 is secured to the sleeve remote from the slit. Five chains 20, 30, 40, 50 and 60 are shown in Fig. 2, and five chains are also shown in Fig. 2. Each chain has a plurality of links, and each link includes a barb. In Fig. 3, a link 24 is shown with its barb 24.

The line secure to the sleeve is in turn wound on a reel 72, as shown in Fig. 1.

The apparatus is used to free a fishing line lure and hook from an obstruction by placing the sleeve over the fishing line through the slit on the sleeve. The sleeve is then lowered on the line until the obstruction is contacted. The sleeve is then moved up and down and around by movement of its tethering line. The action of the cylindrical sleeve and chains frees the fishing line from the obstruction.

The "Summary of the Invention" on page 2 of the specification briefly describes the apparatus. Further explanation is found throughout the specification, and particularly on page 6, the last full paragraph, lines 14-18.

ISSUES

The following issues are presented for review:

1. Whether independent claim 1 and dependent claims 4-5, and 9, and independent claim 11 and dependent claims 12, 13, 15-16 are patentable over O'brien et al (U.S. Patent 4,598,493) in view of Clayton (U.S. Patent 3,987,573) under 35 U.S.C. §103(a).
2. Whether claims 6, 8, and 14 are patentable over O'Brien et al (U.S. Patent 4,598,493) in view of Shirk (U.S. Patent 2,097,536) under 35 U.S.C. §103(a).

GROUPING OF CLAIMS FOR EACH GROUND OF REJECTION

Claim 1 is independent, and claims 4-9 are dependent therefrom.

Claim 11 is independent, and claims 12-16 are dependent therefrom.

Independent claim 1 and its dependent claims 4-9 stand together.

Independent claim 11 and its dependent claim 12 stand together.

Dependent claims 13 and 14-16 stand together.

ARGUMENTS

Independent claim 1 includes five limitations:

- 1) A sleeve,
- 2) A slit in the sleeve,
- 3) A plurality of chain elements secured to the sleeve,

4) A barb on each chain element, and

5) A line secured to the sleeve.

Dependent claim 4 claims a reel on which the line is wound.

Dependent claim 5 adds a handle to the reel of claim 4.

Dependent claim 6 specifies that the sleeve of claim 1 has a longitudinal axis and that the slit extends diagonally with respect to the longitudinal axis.

Dependent claim 7 specifies that the sleeve of claim 1 has a longitudinal axis and that the slit is generally parallel to the longitudinal axis.

Dependent claim 8 specifies that the sleeve of claim 1 has a diameter and that the line is secured to the sleeve diametrically opposed to the slit.

Dependent claim 9 specifies that the plurality of chain elements of claim 1 comprises five chains, and each chain has a plurality of links.

Independent claim 11 also includes five limitations:

1) A sleeve,

2) A slit in the sleeve,

3) A line secured to the sleeve,

4) A plurality of chain elements secured to the sleeve, and

5) A plurality of barbs on the plurality of chain elements.

Dependent claim 12 specifies that the plurality of chain elements comprises a plurality of chains and each chain includes a plurality of links.

Dependent claim 13 specifies that each link of claim 12 includes a barb.

Claim 14, dependent from claim 13, specifies that the slit extends diagonally.

Claim 15, also dependent from claim 13, specifies that the slit is axially extending.

Claim 16, also dependent from claim 13, specifies that the slit is remote from where the line is secured to the sleeve.

All three references applied by the Examiner are for essentially the same purpose as the present invention, namely for freeing a fishing lure and hook from obstructions.

The O'Brien et al '493 Patent discloses a weighted body 18 having chains secured to the body. The body 18 is secured to a line 15 by a steel spring clip 20. The clip has two mounting arms 20b and 20c which apparently are diametrically secured to the body 18. The body 18 includes a slit 22 through which the fishing line 14 extends into the body 18. An insert 19 also includes a slit 23 which is aligned with the slit 22 for receiving the fishing line. The insert 19 is then rotated to misalign the slits 22 and 23 to prevent the line 14 from moving out of the body 18. The line 15 extends from the spring clip 20 to a pole 13.

The Clayton '573 Patent discloses a body 7 which has a slit 14 through which a fishing line 11 extends. Within the body are two line guides 15 and 16 which receive the fishing line 11. The guides 15 and 16 center the fishing line 11 in the body 12 and prevent the fishing line from moving out of the body. Chains 23 are secured to the body 7, and each chain has an unbarbed hook 26 at the bottom of the chain. A hook retrieving line 28 is

secured to the top of the body 7 by a pair of diametrically disposed bail attachments 21 and 22.

Note that the O'Brien patent requires an insert. The present invention defined by claims 1 and 11 do not include such an element.

The Examiner alleges that the Clayton Patent includes a barb. In order to substantiate such allegation, the Examiner equates the barbless hooks of Clayton with the barbs of the present invention. This comparison is structurally flawed and erroneous. The barbs of the present invention are not structurally the equivalent of the hooks of Clayton.

It follows that independent claims 1 and 11 define over O'Brien and Clayton and are accordingly allowable.

Furthermore, claims 2 and 3 specify that each chain element includes a plurality of links and that each link includes a barb. The Examiner has no reference to substantiate his allegation that such structure would be obvious. Such naked assertion is without merit.

The Examiner then states that the reel and handle of claims 4 and 5 would also be obvious, but again provides no reference on which such obviousness may be based. In fact, the teachings of O'Brien are contrary - O'Brien discloses the use of a rod! Neither Clayton nor Shirk show any structure comparable to the reel and handle of the present invention.

The Shirk '536 Patent discloses a frustoconical shaped body 1 which has a longitudinal spiral slot 2 through which fishing line 5 extends into the body. Adjacent to

the top edge of the body 1 is a hole 3 to which a drop line 4 is connected. The hole 3 is disposed ninety degrees from the slot 2. See Fig. 2 and column 1, lines 49-54.

Claim 6 of the present application specifies that the slit in the sleeve through which the fishing link extends is a diagonal slit. The Examiner alleges that the Shirk slit 2 is diagonal. It is not! The slit 2, clearly shown in Fig. 2 and described in column 1, lines 43-48 as being a spiral in one direction and then back again in the opposite direction, with a total arcuate length of forty five degrees. The Shirk slot is not the equivalent of the diagonal slot of the present invention. Claim 6 is accordingly independently allowable.

Claim 8 specifies that the slot is diametrically opposite to where the line is secured to the sleeve. Again, the Examiner's allegation of Shirk showing such structure is completely erroneous. As stated above, Shirk's line is ninety degrees from his line, not a diametrical one hundred eighty degrees. Claim 8 is accordingly also independently allowable.

CONCLUSION

Independent claims 1 and 11 define over the cited art and are accordingly allowable.

It follows that the remaining claims, all dependent, are also allowable.

However, dependent claims 4 and 5 recite a reel and a handle which are neither taught nor suggested by the cited art and they are accordingly independently allowable.

Claims 6 and 14 recite a diagonal slit, and that structure is neither taught nor suggested by the cited art. Claims 6 and 14 are accordingly also independently allowable.

Claim 8 recites that the line is disposed diametrically opposite the slit. This structure is likewise neither taught nor suggested by the cited art, and accordingly claim 8 is likewise independently allowable.

Claim 13 specifies that each link includes a barb. Again, this structure is neither taught nor suggested by the cited art. Claim 13 is accordingly also independently allowable.

Claim 16 specifies that the slit is remote from where the line is secured to the sleeve. All three cited patents disclose slits ninety degrees from where the lines are connected to their respective sleeves. Both O'Brien and Clayton use two points at which their lines attach to their sleeves, and Shirk uses only one line. Ninety degrees is not "remote" as the term is used in claim 16. Claim 16 is accordingly also deemed independently allowable.

Since all the claims are allowable, the application is in condition for allowance.

Respectfully submitted,

MARY C. FREDERICKSON, Appellant

By 
H. Gordon Shields
Attorney of Record

HGS:jag
Phoenix, Arizona
(602) 995-0490

APPENDIX

1(Previously amended). Apparatus for freeing a fishing lure and hook from obstructions comprising in combination:

- a sleeve;
- a slit in the sleeve for receiving a fishing line secured to the lure;
- a plurality of chain elements secured to the sleeve including a plurality of links, and each link includes a barb; and
- a line secured to the sleeve for lowering the sleeve on the fishing line and its chain elements to free the lure from obstructions.

2 (Canceled).

3 (Canceled).

4 (Original). The apparatus of claim 1 which further includes a reel on which the line secured to the sleeve is wound.

5 (Original). The apparatus of claim 4 in which the reel includes a handle for holding the reel and the line wound about the reel.

6 (Original). The apparatus of claim 1 in which the sleeve includes a longitudinal axis, and the slit in the sleeve extends diagonally with respect the longitudinal axis.

7 (Original). The apparatus of claim 1 in which the sleeve includes a longitudinal axis and the slit is generally parallel to the longitudinal axis.

8 (Original). The apparatus of claim 1 in which the sleeve has a diameter, and the line is secured to the sleeve diametrically opposed to the slit.

9 (Original). The apparatus of claim 1 in which the plurality of chain elements comprises five chain elements, each of which chain elements includes a plurality of links.

10 (Canceled).

11 (Previously Added). Apparatus for freeing a fishing lure and hook from obstructions comprising in combination:

 a sleeve;

 a slit in the sleeve for receiving a fishing line having a snagged lure and hook;

 a line secured to the sleeve for lowering the sleeve on the fishing line;

 a plurality of chain elements secured to the sleeve remote from where the line is secured to the sleeve; and

 a plurality of barbs on the plurality of chain elements.

12 (Previously Added). The apparatus of claim 11 in which the plurality of chain elements comprise a plurality of chains, and each chain includes a plurality of chain links.

13 (Previously Added). The apparatus of claim 12 in which each link of the plurality of chain links includes a barb.

14 (Previously Added). The apparatus of claim 13 in which the slit extends diagonally on the sleeve.

15 (Previously Added). The apparatus of claim 13 in which the slit extends axially along the sleeve.

16 (Previously Added). The apparatus of claim 13 in which the slit is remote from where the line is secured to the sleeve.